IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

BENEFIT CONTROL METHODS	**:**	
et al.	**:**	**CIVIL ACTION**
v.	**:**	
	:	**97-4418**
HEALTH CARE SERVICES, INC.,	**:**	
et al.	**:**	

MEMORANDUM

Broderick, J. **January 16, 1998**

Defendant Columbia/HCA Healthcare has filed this Motion to Dismiss Count Two and Count Three of Plaintiff's Complaint. Plaintiffs Benefit Control Methods and Robert E. Fitzpatrick ("Plaintiffs") have opposed the Motion. For the reasons which follow, the Court will grant the Motion.

Plaintiffs filed the instant action against Health Care Services, Inc., Diagnostek, Inc., Value RX, Inc., and Columbia/HCA Healthcare Corporation (collectively "Defendants"). Plaintiff's complaint alleges that in 1989, Plaintiffs entered into a contract with Health Care Services, Inc. in which Plaintiffs agreed to market Health Care Services' mail order drug plan services to customers in Michigan in exchange for commissions from Health Care Services. According to the allegations in their Complaint, Plaintiffs have performed their obligations under the contract, but Health Care Services has refused to fulfill its contractual obligations by failing to provide commissions to Plaintiffs as agreed and failing to provide Plaintiffs with an accounting of those sales for which Plaintiffs are entitled to commissions. Plaintiffs allege that the other Defendants-- Diagnostek, Inc., Value RX, Inc., and Columbia/HCA Healthcare Corporation are successors in interest to the contractual rights and obligations of Defendant Health Care Systems, and are therefore obligated under the contract. According to Plaintiffs'

allegations, these Defendants have refused to honor their contractual obligations to Plaintiffs.

Count One of Plaintiffs' Three Count Complaint alleges a claim for Breach of Contract. Count Two alleges a claim for Tortious Interference with Prospective Economic Advantage, and Count Three is a claim for an Accounting. Defendant Columbia/HCA Healthcare Corporation has filed a Motion to Dismiss Count Two and Count Three of Plaintiffs' Complaint pursuant to Federal Rule 12(b)(6) of the Federal Rules of Civil Procedure, claiming that Plaintiffs have failed to state a claim upon which relief could be granted.

In deciding a Motion to Dismiss pursuant to Fed.R.Civ.P. 12(b)(6), the court accepts as true all factual allegations contained in the complaint, as well as all reasonable inferences which could be drawn therefrom, and views them in the light most favorable to the plaintiff. H.J. Inc. v. Northwestern Bell Tel. Co., 492 U.S. 229, 249-50 (1989); Zlotnick v. TIE Communications, 836 F.2d 818, 819 (3d Cir. 1988). The court will not dismiss a complaint "unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Conley v. Gibson, 355 U.S. 41, 45-46 (1957).

Count Two of Plaintiff's Complaint does not sufficiently state a claim of tortious interference with prospective economic advantage. A claim of tortious interference with prospective economic advantage must allege (1) a prospective contractual relationship, (2) defendant's intent to harm plaintiff by preventing the relationship from occurring, (3) the absence of privilege or justification on the part of the defendant, and (4) the occurrence of actual damages. Kachmar v. Sungard Data Sys., Inc., 109 F.3d 173, 184 (3d Cir. 1997). With respect to the first element of the claim, the prospective contractual relationship at issue must be more

than a "mere hope" of a future contractual arrangement. Id. A complaint alleging tortious interference with prospective economic advantage must allege facts which, if proven, would give rise to a "reasonable probability" that the plaintiff would have entered into particular contracts but for the defendant's interference. Advanced Power Systems, Inc. v. Hi-Tech Systems, Inc., 801 F.Supp. 1450, 1459 (E.D. Pa. 1992).

Plaintiffs' Complaint in the instant case contains no factual allegations which, if proven, would give rise to a reasonable probability of obtaining other contracts but for Defendants' interference. Plaintiffs' Complaint alleges only that the "Defendants have failed and have intentionally refused to permit the Plaintiffs to participate in the solicitation of existing customers and new customers, which conduct has worked to the detriment of the Plaintiffs and which is contrary to the contract and to the prospective economic advantage and economic interest of Plaintiffs." Plaintiffs' Complaint does not refer to any prospective contract or prospective contractual relationship other than its contract with Defendants. Indeed, in light of the fact that Plaintiffs had contracted with Defendants to solicit customers on behalf of Defendants, it is unclear why Defendants' breach of that contract would result in a loss of prospective contractual relationships between Plaintiffs and other third parties. Accordingly, the Court will dismiss Plaintiffs' claim for tortious interference with prospective economic advantage.

The Court will also dismiss Count Three of Plaintiffs' Complaint, which seeks "an accounting of all revenues and customers in Michigan from 1989 to the present in accordance with the contract." It is well-settled that an accounting is an equitable remedy which is available only when there is no adequate remedy at law. Taylor v. Wachtler, 825 F.Supp. 95, 104 (E.D. Pa. 1993); Buczek v. First Nat. Bank of Mifflintown, 366 Pa. Super. 551, 556, 531 A.2d 1122

(1987). Plaintiffs in the instant case have an adequate remedy at law-- namely, their breach of contract claim which is set forth in Count One of their Complaint. The information which Plaintiffs seek in their claim for "accounting" (i.e., a list of Defendants' clients in the state of Michigan from 1989 to the present) appears to be information which relates to the damages which Plaintiffs allegedly incurred as a result of Defendants' alleged breach. Such information is readily obtainable through the discovery process provided under the Federal Rules of Civil Procedure. Accordingly, the Court will dismiss Count Three of Plaintiffs' Complaint.

An appropriate Order follows.